

BEFORE THE UNITED STATES FEDERAL ELECTION COMMISSION

In the Matter of:

The New Jersey State Republican
Party Committee,

Its Treasurer,

Zimmer for Senate, and

Its Treasurer.

Matter Under Review

4466

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 16 12:34 PM '96**COMPLAINT SEEKING ENFORCEMENT OF THE FEDERAL
ELECTION LAWS AND INJUNCTIVE RELIEF**

1. The Complainant in this Matter Under Review is Torricelli for U.S. Senate, by and through its assistant treasurer Gioia Lucente. The official address is P.O. Box 549, 41 Baynard Street, 2nd Floor, New Brunswick, New Jersey 08903.
2. Respondents include, but may not be limited to, the New Jersey Republican Party Committee and the Zimmer for Senate Committee, as well as the treasurers of the respective committees.
3. Complainants respectfully request that the Commission exercise its authority, granted pursuant to the Federal Election Campaign Act, 2 U.S.C. § 437g, to investigate the violations of federal campaign finance law and regulations described in the Complaint (above-the-limits in-kind contributions or expenditures in the form of television advertisements currently being broadcast on Philadelphia, Pennsylvania television stations), to have enjoined further violations of the federal law and regulations, and to issue the appropriate sanctions for the violations that have already occurred.
4. Complainant respectfully submits the following information demonstrating reason to believe that the federal election laws have been violated:

FACTUAL BACKGROUND

5. Congressman Robert Torricelli is the Democratic Party's 1996 nominee for the United States Senate seat being vacated by Senator Bill Bradley.
6. Congressman Richard Zimmer is Congressman Torricelli's Republican opponent in this Senate race.

09/13/96 FRI 14:57 FAX 2027377565

7. The New Jersey Republican Party Committee has begun airing, on Philadelphia, Pennsylvania television stations, advertisements stating the following:

Male Announcer: Bob Torricelli on taxes. Liberal and wrong

Female Announcer: Torricelli voted for higher income taxes. Taxes on homes, cars, medicine, jobs, childcare, telephone, seniors, families, small business, gasoline....

MA: You name it, Torricelli taxed it.

In fact, Torricelli is so liberal he even voted for taxes Jim Florio voted against.

When it comes to taxes, Torricelli is liberal to a "T".

Tell Torricelli (1-202-225-3121 appears on the screen) Stop voting for higher taxes.

8. While the advertisements pretend to ask constituents to tell Congressman Torricelli to take different legislative positions, they are actually designed for the purpose of influencing the New Jersey Senate race and to expressly advocate Congressman Torricelli's defeat in November.

9. In a nutshell, the advertisements are directed to New Jersey Senate voters, not Congressman Torricelli's constituents.

10. Indeed, the advertisements are being run in Philadelphia -- not even the same state whose constituents Congressman Torricelli represents.

11. Furthermore, Congressman Torricelli represents Northern New Jersey. The Philadelphia, Pennsylvania television market extends only to Southern New Jersey. There are no Torricelli constituents in Southern New Jersey -- only potential Torricelli voters in the upcoming senatorial election. In fact, no person seeing the ad can do what it requests because none are Congressman Torricelli's constituents. Conversely, none of Congressman Torricelli's real constituents can see the ad.

12. The advertisements are being run in close proximity only to the November election, and not to any congressional vote or issue that they pretend to address. Tax legislation is not pending before Congress, which is scheduled to go out of session soon.

13. The advertisements' call to action, moreover, asks people to do ineffectual things. As explained above, there are no relevant legislative acts of Congressman Torricelli left to

influence (he will be leaving the House of Representatives) -- unless he wins the Senate election first.

14. Upon information and belief, the New Jersey State Republican Party does not have sufficient amounts remaining under its contribution limits to Congressman Zimmer or its 2 U.S.C. § 441a(d) expenditure authority for Congressman Zimmer to pay for the advertisements that are being run.

LEGAL ARGUMENT

15. The advertisements' exhortation for voters to call Congressman Torricelli is a thinly veiled sham to try to evade: (1) the State Republican Party's contribution and expenditure limits to Congressman Torricelli's Senate race opponent, Representative Richard Zimmer; and (2) the federal election laws' requirement that an independent expenditure may not be coordinated.

16. Federal campaign finance regulations define both a contribution and an expenditure as an outlay that is "made by any person for the purpose of influencing any election for federal office." 2 U.S.C. §§ 431(8)(A)(i) & 431(q)(A)(i).

17. For the reasons set forth above, the advertisements in question may only be considered to have been made for the "purpose of influencing" an election for federal office -- the 1996 New Jersey Senate race. They thus represent either an above-the-limits in-kind contribution or an above-the-limits expenditure from the New Jersey State Republican Party to the Zimmer Senate campaign.

18. The advertisements cannot be considered an independent expenditure or issue advocacy that might afford the Respondents a way around the direct contribution and expenditure limits.

19. The advertisements do not represent issue advocacy that the Respondent New Jersey State Republican Party could make without limit:

20. Issue advocacy is that type of advocacy that does not "expressly advocate the election or defeat of a clearly identified candidate" for federal office. See 2 U.S.C. § 431(17) (definition of independent expenditure).

21. Recently amended Commission regulations, at 11 C.F.R. § 100.22, define "express advocacy" as:

. . . any communication that -- (a) Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote "Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory,"

"defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!"; or

(b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because

(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates(s) or encourages some other kind of action.

22. For, among other reasons, those set forth in Paragraphs 8 through 13, above, the advertisements fall four square within 11 C.F.R. § 100.22(b), so they represent "express advocacy," not "issue advocacy." The ads ostensibly calling on constituents to tell their congressman how they feel are being run (a) out of a different state, (b) to people who are not constituents, (c) for legislation that is not pending in Congress, (d) for a person not going to be in the House, (e) where the real constituents cannot see the ad, and (f) in close proximity to the election and not any relevant legislative debate or vote.

23. Because the advertisements represent "express advocacy," they will not represent a direct in-kind contribution or an expenditure only if they represent an independent expenditure. The advertisements cannot represent an independent expenditure for the following reasons:

24. The Federal election law defines an "independent expenditure," 2 U.S.C. § 431(17), as:

The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

25. The New Jersey Republican Party cannot make an independent expenditure on behalf of the Zimmer Campaign because the advertisements must be seen to have been coordinated with the Zimmer campaign.

26. First, while the Supreme Court recently held open the possibility that a state party committee might be able to make an independent expenditure on behalf of its nominee in Colorado Republican Federal Campaign Com'tee v. Fed. Election Comm'n, 1996 WL 345766 (U.S. 1996), the Commission was not able to issue a decision whether such activity may be conducted this year.

27. Indeed, Respondents have already stated on the public record that they were planning to illegitimately seek to use the Supreme Court's opinion as a way to equalize Congressman Torricelli's huge monetary advantage over Congressman Zimmer. See Exhibit A ("Torricelli Outstrips Zimmer in Fund Raising," The New York Times, B4 (July 16, 1996)).

28. Second, setting aside the appropriateness of any presumption of coordination, the public record reflects that the plans of the Zimmer campaign and the New Jersey Republican Party are being jointly mapped out. See Exhibit B ("At One Office, Intricate Links In New Jersey's G.O.P. Funds," The New York Times, A1 et. seq. (July 8, 1996)).


29. Finally, the fact that the New Jersey Republican Party Committee tried to craft the advertisement as issue advocacy demonstrates its actual knowledge that the advertisement cannot represent an independent expenditure.

30. Thus, the advertisements cannot be seen to represent an independent expenditure or issue advocacy and they are either above-the-limits in-kind contributions or above-the-limits expenditures.

31. The New Jersey State Republican Party has violated the law by making this above-the-limits in-kind contributions or expenditures in the form of these advertisements; and, the Zimmer Senate Committee has violated the law by accepting them.

Dated: September 13, 1996

Respectfully submitted,



Gioia Lucente

COUNTY OF Middlesex)
STATE OF New Jersey)

Subscribed to and sworn before me
this 13th day of September, 1996

Kenneth Rother, Esq. (admitted NJ bar - 12/94)
Notary Public
My Commission expires: _____

EXHIBIT A

99.04.391.4794
4624.163.40.66

Torricelli Outstrips Zimmer in Fund Raising

By BRETT PULLEY

TRENTON, July 15 — In what is expected to be one of the most expensive and closely contested Senate races this year, Representative Robert G. Torricelli, the Democratic candidate for the seat being vacated by Senator Bill Bradley, reported having more than twice as much money on hand as his Republican rival, Representative Richard A. Zimmer.

The gap leaves Mr. Zimmer with a need to concentrate on fund raising at a time when he should be focusing on reaching out to voters. Both candidates have acknowledged that they will be forced to spend heavily in the fall on television advertising since neither has significant statewide recognition.

In reports filed with the Federal Election Commission, Mr. Torricelli said he had \$5.9 million in the bank as of June 30; Mr. Zimmer reported having \$2.7 million. During the period that began May 16 and ended June 30, Mr. Torricelli raised \$1.5 million, compared with \$835,000 for Mr. Zimmer.

Because he faced two primary opponents in June, Mr. Zimmer was forced to spend more than Mr. Torricelli, who was unopposed. Mr. Zimmer spent \$410,000, more than twice the \$200,000 Mr. Torricelli spent.

"The numbers are what they are, and Torricelli is ahead," conceded Roger Bodman, a lobbyist and Republican analyst. "Obviously you'd like to have more than less, but this doesn't concern me now."

Mr. Bodman and Republican officials said they anticipated more contributions from individuals and major support from the Republican National Committee as the election draws nearer. They cited a recent Supreme Court decision allowing political parties to spend as much as they want to help candidates through the use of generic "issue advertisements," as long as the candidate and the party are not working together.

The National Senatorial Committee, the Republican Party's support unit for Senate candidates, reaffirmed its plans to provide money to Mr. Zimmer, who is running for 1 of 12 open Senate seats.

"This committee plans on assisting Congressman Zimmer to the maximum extent possible," said Gordon Hensley, a spokesman for the committee. "The Zimmer camp is on track and on message."

Still, the financial reports evoked a cheerful response from Mr. Torricelli's campaign organization, where

one official said that the financial filings were significant because potential contributors sometimes wait until late in the contest to gauge a candidate's chances for winning before writing a check. And like polling information, the amount of money a candidate has for campaigning is one of the best barometers.

"This is an extremely impressive filing showing the depth of support for Bob's campaign," said David Plouffe, Mr. Torricelli's campaign manager.

Mr. Zimmer's campaign spokeswoman, Andrea Hofelich, said she was confident that the campaign would reach its goal of \$8 million, the amount that both candidates have said they would need.

"I think the bottom line is that we will do what it takes to reach our

goal," she said. "We're not worried about what he's raised. Right now, we do have enough to get out our message."

But while polls have shown Mr. Torricelli to hold only a slight lead thus far, his larger war chest will free him to campaign and advertise, while Mr. Zimmer will have to work to advance his bank account.

And while Mr. Torricelli has probably been buoyed by President Clinton's strong showing in the polls, Mr. Zimmer, likewise, may have been hurt by Bob Dole's relative weakness.

The candidates must make one more financial disclosure before the election, in mid-October, when the television advertising blitz will be well under way.

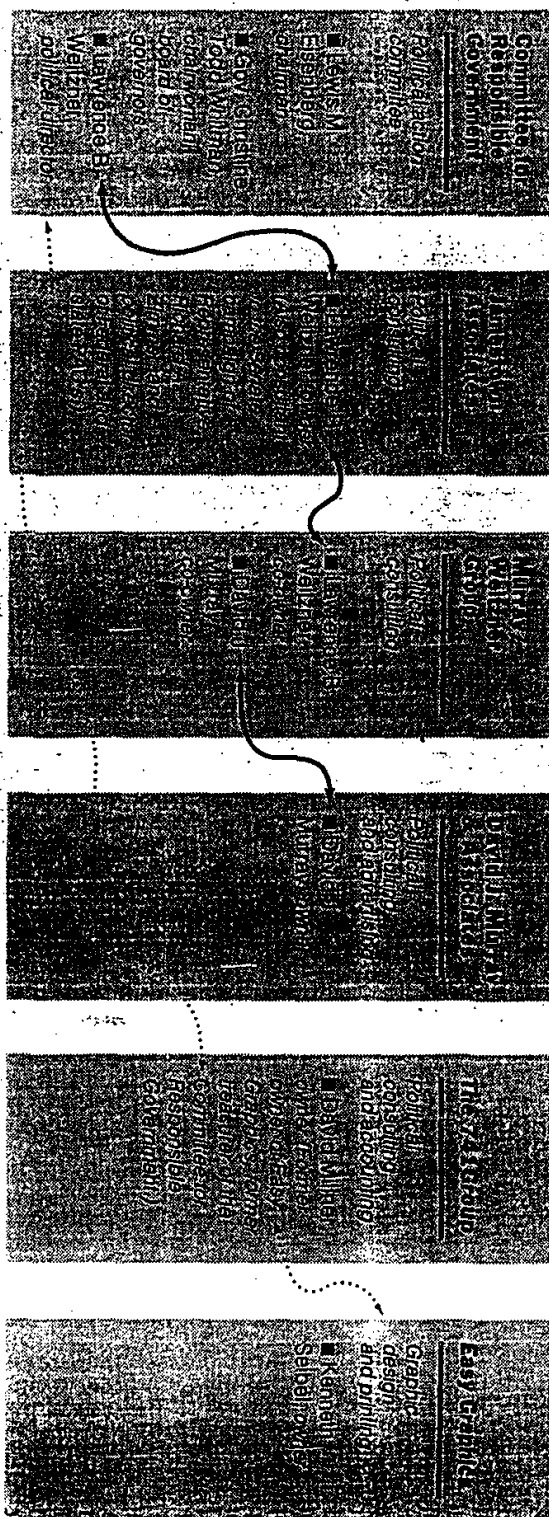
EXHIBIT B

99.04.391.4796

At One Office, Intricate Links In New Jersey's G.O.P. Funds

Here, in a former warehouse at 741 Alexander Road, is the headquarters of the Committee for Responsible Government, a young but flourishing federally registered political action committee that is dominated by Mrs. Whitman and gives money to candidates throughout the country who share her philosophy of fiscal conservatism and moderation on social is-

Continued on Page B2, Column 1



Continued From Page A1

cialists who control the issuing of bonds.

But while there is no evidence that the activity at 741 Alexander Road violates Federal regulations and election laws intended to dampen influence on politicians, it seems to violate the spirit in which they were written.

Lawrence B. Weitzner, who owns Jamestown Associates and is the political director of both PAC's and a consultant to Mr. Zimmer, said that the businesses and the PAC's all were operating within election laws and guidelines. He said that Democratic officials and a labor organization that criticized the operations did so for political gain, and that the perception of any wrongdoing was a result of the complexity of the overlapping operations.

"It looks worse than it is," he said in an exasperated tone.

Nevertheless, the Federal Election Commission has begun to examine the operations at 741 Alexander Road after the New Jersey State Industrial Union Council, an affiliate of the A.F.L.-C.I.O., filed a complaint with the commission last month, charging that the various companies were being used illegally to finance the campaign of Mr. Zimmer, who is seeking the Senate seat being vacated by Bill Bradley.

Complaint Cites A 'Tangled Web'

Citing what it called "a tangled web" involving the various companies at 741 Alexander and the PAC's, the union group, which is backing Mr. Zimmer's Democratic opponent, Representative Robert G. Torricelli, said in the complaint: "One wonders exactly what form of support C.R.G. gave to Mr. Zimmer. All roads in the Zimmer campaign seem to lead to 741 Alexander." A spokesman for the election commission in Washington said the agency was reviewing the complaint. Mr. Zimmer has denied the charges.

In races across the country as heated as the New Jersey Senate contest, allegations like these are not uncommon. But often, no action is taken because they are found to be within the limitations of campaign finance laws and regulations.

Mr. Weitzner, who was an official in the administration of Gov. Thomas H. Kean, is also the former treasurer of the Committee for Responsible Government and its New Jersey

affiliate. He and David J. Murray are co-owners of the Murray-Weitzner Group, a political consulting concern. In addition, Mr. Murray has his own company, David J. Murray & Associates, based in the same office building.

In a recent interview, Mr. Weitzner explained the relationships between the various entities at 741 Alexander. "I have my clients, Dave has his, and we work on some together," Mr. Weitzner said.

For example, Mr. Weitzner is the chief consultant of Mr. Zimmer's campaign and Mr. Murray is running the re-election campaign of Representative William J. Martini from the Eighth District in northern New Jersey. Both are handling the Congressional campaign of Steven J. Corodemus, a State Assemblyman who is seeking a Congressional seat in the Sixth District in central New Jersey.

Their offices evolved into a campaign conglomerate in recent years after Mr. Murray decided to bring together, under one roof, many of the services that campaigns require. "I said, 'Why do we need all these different consulting contracts for different services?'" Mr. Murray recalled recently.

According to Federal election records, the Committee for Responsible Government pays Mr. Weitzner's Jamestown Associates a monthly consulting fee of \$3,750. At the same time, Jamestown collects \$5,000 a month for consulting from the Zimmer for Senate campaign. The PAC also pays accounting fees to the 741 Group, which is owned by David Millner, the treasurer of Mr. Zimmer's campaign. Mr. Millner is also the former owner of Easy Graphics, and until last month he was treasurer of the Committee for Responsible Government.

In a letter to Mr. Weitzner earlier this year, election commission officials questioned the low costs for rent, salaries, utilities, telephones and supplies that the Committee for Responsible Government listed in its Federal filings. In their response to the letter, officials of the PAC explained that all the overhead costs were included in the consulting fees paid to Jamestown Associates.

"We did over a dozen legislative races last year," Mr. Weitzner said. "One of the reasons we're successful is that we win a lot. But we're also very conscious of how the dollars are spent. We make sure it's spent on contacting the voters and not on overhead."

Questions have also been raised about the national PAC's acceptance of donations from Wall Street bond

underwriters, who could on elected officials to provide lucrative municipal bond work to their firms.

Since 1994, municipal bond underwriters who contribute to the campaigns of bond-issuing officials have been banned from doing business for two years with those officials. The Federal ban was intended to remove the appearance of a conflict of interest between Wall Street bond dealers who make political contributions and the elected officials who award municipal securities work.

PAC Money Trail Leaves Few Tracks

Although the rule bars such donations directly to candidates, it does not cover donations to PAC's, unless the PAC is clearly being used to funnel money directly to a specific candidate.

"You'd have to be able to follow the money," said Christopher Taylor, executive director of the Municipal Securities Rulemaking Board, the regulatory agency that monitors the law. "There is no way to follow the money except where the PAC is giving to only one or two candidates."

While the Committee for Responsible Government takes in personal contributions, limited to \$5,000, as

stipulated by Federal law, it has a local affiliate that collects all the corporate contributions that the national PAC is not allowed to accept. New Jersey law allows unlimited PAC contributions from corporations. The money that the PAC sends around the country comes from the national PAC, while money for New Jersey candidates and other PAC activities comes from the state account.

Since it started in 1993, the national PAC has raised about \$1.3 million, most of it from the one dinner at which Mrs. Whitman was the main speaker. As of April, there was \$290,000 in the national account and \$310,000 in the state account. The PAC has contributed about \$200,000 from the state account to legislative candidates. Federal candidates, including Gov. William F. Weld of Massachusetts, Mr. Zimmer, Mr. Martini and Ms. Molinari, have each received as much as the \$10,000 limit from the Federal account.

The PAC money is being used to support Mrs. Whitman in other ways. Last year it paid to finance a study on privatization of state services for the Governor, and PAC officials said they were developing a site on the Internet's World Wide Web that would feature Mrs. Whitman. They are also planning a major event, which they still have to determine, for the Republican National Conven-

tion in August.

In March 1995, wealthy Republicans gathered at the Sheraton New York Hotel for a fund-raising dinner for the PAC. Governor Whitman who was the guest of honor, was joined by Gov. John G. Rowland of Connecticut and Libby Pataki, who filled in for her husband, Gov. George E. Pataki of New York.

The event raised about \$1.1 million, and about \$15,000 came from employees of Goldman, Sachs & Company and Merrill Lynch, the two top bond underwriting firms in New Jersey. About \$15,000 more has been donated by bond underwriters over the last two years, Federal Election Commission reports show. Some of the proceeds from the dinner went to state and Federal candidates, but there is no way to show that the same dollars that came from bond underwriters went to the campaigns of officials who have bond-issuing authority. "It didn't trigger the ban," Mr. Taylor said. "It's only if you can trace the money."

Mrs. Whitman, who was the main attraction of the dinner and has always been featured prominently in all the PAC's literature, has influence over billions of dollars in state bonds underwritten by Goldman, Sachs and Merrill Lynch. But Lewi M. Eisenberg, the chairman of the PAC and a former senior partner at Goldman, Sachs, said "there was

nothing wrong" with the contributions from the investment bankers because Governor Whitman had no official role in the PAC at that time.

"These were my friends," Mr. Eisenberg said. "They gave \$4,000 or \$5,000 each." The restrictions on bond underwriters did not apply, he said, "because Governor Whitman didn't have an official role in the committee at that time. She was the guest speaker at the dinner."

Several months later, Governor Whitman became the chairwoman of the PAC's board of governors. At the time of the dinner, Mr. Eisenberg, a confidant of the Governor, was a member of board of the Port Authority of New York and Jersey, a position he was named to by Mrs. Whitman. He has since become chairman of Port Authority and is now also the national co-chairman for finance for Bob Dole's Presidential campaign.

The contributions did not violate municipal securities rules, Mr. Taylor said, but he conceded that even with the rules, "there are a ton of ways for contributors to make themselves known to politicians." He added, "What is troubling is what troubles most Americans about the campaign finance system, not only nationally but locally, too, is the role of money, and the role of lots of money in influencing elections."